

Notice of Allowability

Application No.

10/666,280

Examiner

Anne Marie Grunberg

Applicant(s)

HEFFNER, MICHAEL R.

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to application filed 9/17/03.
2. ☒ The allowed claim(s) is/are 1.
3. ☒ The drawings filed on 17 September 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Drawings

The drawing has been accepted by an official draftsman.

Examiner's Comment/Reasons for Allowance

1. The description is as complete as is reasonably possible. The invention is described in UPOV hit CA PBR 00-2305. However, no evidence of sale prior to June 23, 2002 was found. Based on the declaration, the plant was not sold or publicly distributed anywhere in the world more than one year prior to the U.S. filing. However, the Examiner would like to point out that the declaration was signed 12/09/02. It is unclear how the Applicant can state that the instant plant was not sold or made publicly available anywhere in the world more than one year prior to the U.S. filing when the Applicant has no idea when the case is going to be filed. In this case, about nine months went by between the signing of the declaration and the date of filing. If the plant was sold September 1, 2002, for example, it would enable the publication and a bar to patentability under 35 USC 102(b) would have been made. The agent of record in this case verified that indeed the plant had not been sold or otherwise made publicly available more than one year prior to the filing on 9/17/03. As a result, no §105 issues were raised with regard to the UPOV hit.

Examiner's Amendment

1. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

The following changes were authorized (and permission to make same by Examiner's amendment was granted) by Anne Whealey in the course of a telephonic interview with Examiner Grünberg on March 16, 2004:

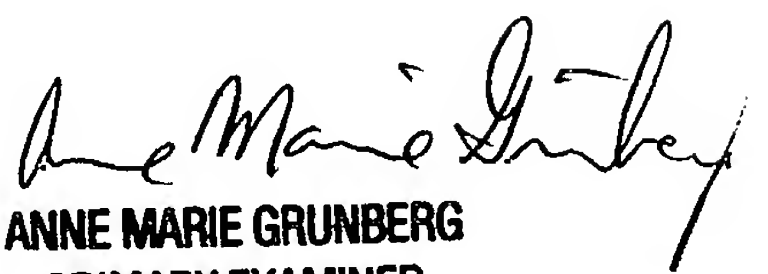
IN THE SPECIFICATION

At page 2, line 5, "taken" has been deleted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie Grünberg whose telephone number is (571) 272-0975. The examiner can normally be reached from Monday through Thursday from 7:30 until 5:00, and every other Friday from 7:30 until 4:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974. The fax number for the unit is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.


ANNE MARIE GRUNBERG
PRIMARY EXAMINER